

current application, was submitted; and

(iii) For the fiscal year described in paragraph (a)(1)(ii) of this section, the total amount of assistance from the Department or any other entity that is likely to be made available on a formula basis or in the form of program income as defined in 24 CFR part 85.

(2) In the case of assistance that will be provided pursuant to contract over a period of time (such as project-based assistance under Section 8 of the United States Housing Act of 1937), all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

(b) *Content of disclosure.* Applicants that receive or can reasonably be expected to receive, as defined in paragraph (a) of this section, an aggregate amount of assistance that is in excess of \$200,000 must disclose the following information:

(1) Other governmental assistance that is or is expected to be made available, based upon a reasonable assessment of the circumstances, with respect to the project or activities for which the assistance is sought;

(2) The name and pecuniary interest of any interested party; and

(3) A report of the expected sources and uses of funds for the project or activity which is the subject of the application, including governmental and non-governmental sources of funds and private capital resulting from tax benefits.

(c) In the case of mortgage insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the disclosures required under Section 102(b) and this section, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

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§ 4.11 Updating of disclosure.

(a) During the period in which an application for assistance covered under Section 102(b) is pending, or in which such assistance is being provided, the applicant must report to the Department, or to the State or unit of general local government, as appropriate:

(1) Any information referred to in Section 102(b) that the applicant should have disclosed with respect to the application, but did not disclose;

(2) Any information referred to in Section 102(b) that initially arose after the time for making disclosures under that subsection, including the name and pecuniary interest of any person who did not have a pecuniary interest in the project or activity that exceeded the threshold in Section 102(b) at the time of the application, but that subsequently exceeded the threshold.

(b) With regard to changes in information that was disclosed under Sections 102(b) or 102(c):

(1) For programs administered by the Assistant Secretary for Community Planning and Development:

(i) Any change in other government assistance covered by Section 102(b) that exceeds the amount of all assistance that was previously disclosed by the lesser of \$250,000 or 10 percent of the assistance;

(ii) Any change in the expected sources or uses of funds that exceed the amount of all previously disclosed sources or uses by the lesser of \$250,000 or 10 percent of previously disclosed sources;

(2) For all other programs:

(i) Any change in other government assistance under Section 102(b)(1) that exceeds the amount of assistance that was previously disclosed;

(ii) Any change in the pecuniary interest of any person under Section 102(b)(2) that exceeds the amount of all previously disclosed interests by the lesser of \$50,000 or 10 percent of such interest;

(iii) For all projects receiving a tax credit under Federal, State or local law, any change in the expected sources or uses of funds that were previously disclosed;

(iv) For all other projects:

(A) Any change in the expected source of funds from a single source that exceeds the lesser of the amount previously disclosed for that source of funds by \$250,000 or 10 percent of the funds previously disclosed for that source;

§ 4.13

(B) Any change in the expected sources of funds from all sources previously disclosed that exceeds the lesser of \$250,000 or 10 percent of the amounts previously disclosed from all sources of funds;

(C) Any change in a single expected use of funds that exceeds the lesser of \$250,000 or 10 percent of the previously disclosed use;

(D) Any change in the use of all funds that exceeds the lesser of \$250,000 or 10 percent of the previously disclosed uses for all funds.

(c) *Period of coverage.* For purposes of updating of Section 102(c), an application for assistance will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the selection of the applicant.

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§ 4.13 Limitation of assistance subject to section 102(d).

(a) In making the certification for assistance subject to Section 102(d), the Secretary will consider the aggregate amount of assistance from the Department and from other sources that is necessary to ensure the feasibility of the assisted activity. The Secretary will take into account all factors relevant to feasibility, which may include, but are not limited to, past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(b) If the Department determines that the aggregate of assistance within the jurisdiction of the Department to a housing project from the Department and from other governmental sources exceeds the amount that the Secretary determines is necessary to make the assisted activity feasible, the Department will consider all options available to enable it to make the required certification, including reductions in the amount of Section 8 subsidies. The Department also may impose a dollar-for-dollar, or equivalent, reduction in the amount of HUD assistance to offset the amount of other government assistance. In grant programs, this could result in a reduction of any grant

24 CFR Subtitle A (4-1-03 Edition)

amounts not yet drawn down. The Department may make these adjustments immediately, or in conjunction with servicing actions anticipated to occur in the near future (*e.g.*, in conjunction with the next annual adjustment of Section 8 rents).

(c) If an applicant does not meet the \$200,000 disclosure requirement in § 4.7(b), an applicant must certify whether there is, or is expected to be made, available with respect to the housing project any other governmental assistance. The Department may also require any applicant subject to this subpart A to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the applicant must submit such information as the Department deems necessary to make the certification and subsequent adjustments under Section 102(d).

(d) The certification under Section 102(d) shall be retained in the official file for the housing project.

Subpart B—Prohibition of Advance Disclosure of Funding Decisions

§ 4.20 Purpose.

The provisions of this subpart B are authorized under section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (42 U.S.C. 3537a) (hereinafter, Section 103). Both the provisions of Section 103 and this subpart B apply for the purposes of Section 103. Section 103 proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. Section 103 also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if such a violation of Section 103 is material, and authorizes the Department to